

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARTHUR THOMPSON,

Defendant-Appellant.

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UNPUBLISHED

November 21, 2006

No. 263032

Wayne Circuit Court

LC No. 02-014287

Before: Servitto, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for possession of less than 25 grams of a controlled substance, MCL 333.7403(2)(a)(v),<sup>1</sup> and possession of a firearm during the commission of a felony (“felony-firearm”), MCL 750.227b. Defendant was sentenced to two years’ probation for the controlled substance possession conviction to be served after two years’ imprisonment for the felony-firearm conviction. We affirm.

Defendant was convicted for possessing 19.57 grams of heroin and two firearms recovered from a residence in Detroit during the execution of a search warrant. On appeal, defendant argues that there was insufficient evidence to prove that he had constructive possession of the heroin and the firearms. We disagree.

When reviewing a claim of insufficient evidence, we review the record de novo. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). We review the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002).

A conviction for possession of a controlled substance requires proof that defendant “knowingly or intentionally possess[ed] a controlled substance.” MCL 333.7403. Possession

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<sup>1</sup> It is clear from the record that defendant’s conviction was solely for possession of less than 25 grams of a controlled substance, but that it appears to be incorrectly recorded as possession with intent to deliver on the Order of Probation.

can be actual or constructive and can be joint or exclusive. *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992); *People v McKinney*, 258 Mich App 157, 166; 670 NW2d 254 (2003). To prove constructive possession, a connection between the defendant and the controlled substance, beyond mere proximity, is necessary to show that defendant had “dominion or right of control over the drug with knowledge of its presence and character.” *McKinney*, *supra* at 165, quoting *People v Maliskey*, 77 Mich App 444, 453; 258 NW2d 512 (1977); and see *Hardiman*, *supra* at 421; *Wolfe*, *supra* at 520. Evidence of the totality of the circumstances must indicate a sufficient nexus between the defendant and the controlled substance. *Wolfe*, *supra* at 521. The elements of possession can be satisfied by reasonable inferences from circumstantial evidence. *McKinney*, *supra* at 165.

The totality of the circumstances suggests that defendant occupied the bedroom where the heroin was found and, therefore, is sufficiently connected to the heroin for a rational trier of fact to find constructive possession. We compare, for instance, *Hardiman*, *supra* at 423, in which the Court concluded that a rational trier of fact could infer that the defendant possessed drugs found in an apartment bedroom based on circumstantial evidence of residency. The evidence in *Hardiman*, included the presence of the female defendant in the parking lot of the apartment when police arrived, two letters addressed to the defendant at the apartment - one in the mailbox and another in the bedroom nightstand where marijuana and heroin were recovered, in conjunction with women’s clothing in the closet. *Id.* Heroin was also found in the pockets of a dress in the closet, and there was no evidence that another woman resided at the apartment. *Id.* at 420, 422.

Here, defendant admitted to living at the house, had a car registered to the house that was seen coming and going from the house, and was found on the premises. Moreover, an officer who executed the search warrant directly linked defendant to the bedroom where the heroin was found, testifying that he saw an identification card (“the ID”) and “papers” belonging to defendant in the bedroom and saw clothing in the closet, where the heroin was found, that appeared to fit defendant. There was no evidence that another male resided in the house. This circumstantial evidence, combined with testimony that the bed had sheets and pillows on it, supports the notion that defendant resided in the bedroom. Furthermore, testimony indicating that defendant participated in previous drug transactions at or embarking from the house, suggested that defendant knew of the presence and nature of the heroin. See, e.g., *Wolfe*, *supra* at 523-524.

Defendant’s primary complaint on appeal is essentially that the officer’s testimony, which establishes defendant’s residency and previous drug transactions, is not credible and, therefore, that the evidence is insufficient to show constructive possession. Defendant notes that the officer did not confiscate the ID and papers he found into evidence as proof of residency, despite having the authority to do so. While defendant claims that the officer’s testimony is therefore suspect, this Court leaves questions of credibility to the trier of fact, deferring to the trial court’s opportunity and ability to assess witness credibility. *Wolfe*, *supra* at 514-515; *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). The trial court found the witnesses to be credible. Accordingly, the evidence is sufficient to connect defendant to the heroin and to establish constructive possession.

To support a felony-firearm conviction the prosecution must show that defendant possessed a firearm during the commission of, or the attempt to commit, a felony. MCL

750.227b; *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003); *Avant, supra* at 505. Possession of a weapon can be actual or constructive and can be proven by circumstantial evidence. *People v Hill*, 433 Mich 464, 469-471; 446 NW2d 140 (1989).

When considering whether a defendant constructively possessed a firearm for purposes of a felony-firearm conviction, courts analogize cases defining constructive possession of firearms in other contexts. See, e.g., *People v Burgenmeyer*, 461 Mich 431, 438-439; 606 NW2d 645 (2000). For instance, we consider whether a defendant had knowledge of the firearm's location and whether the firearm was readily accessible during the commission of the crime. *People v Davis*, 101 Mich App 198, 201, 203; 300 NW2d 497 (1980). This Court has also considered whether defendant had proximity to the firearm with "indicia of control." *Id.* at 202. In the context of felony-firearm with drug possession as the underlying felony, courts consider the proximity of the firearm to the drugs when determining whether there was simultaneous constructive possession of the firearm. *Burgenmeyer, supra* at 439.

Defendant's case is best compared to *Burgenmeyer, supra* at 433, in which the defendant was convicted of cocaine possession and felony-firearm. There, the Court held that evidence was sufficient to allow a jury to infer that the defendant committed felony-firearm, when it showed that the drugs and weapons were close enough in proximity for a jury to conclude that the defendant constructively possessed both simultaneously. *Id.* at 440. The Court emphasized that the defendant must possess a firearm "when" committing the felony and that the focus for drug-possession, which can take place over an extended time period, would be on the offense dates specified in the information. *Id.* at 439-440. The *Burgenmeyer* defendant, while not present during the execution of the search warrant, had acknowledged there was cocaine in his bedroom and police found firearms on top of the same bedroom dresser from which they recovered the cocaine. *Id.* at 440.

Here, the firearms were found under the mattress in the same bedroom in which the heroin was discovered. Testimony indicated that the firearms in this case were "a few steps away" from the closet where the heroin was located. There was sufficient evidence to infer that defendant resided in the bedroom. The location of the firearms in defendant's bedroom supports the inference that defendant knew where the firearms were located and that they were readily accessible to him. *Davis, supra* at 203. The close proximity of the firearms to the heroin supports the inference that defendant possessed both at the same time and can, therefore, be guilty of felony-firearm. *Burgenmeyer, supra* at 440.

Affirmed.

/s/ Deborah A. Servitto  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot